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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91217235
Party	Defendant Voice Proctor, Inc.
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Submission	Motion to Dismiss 2.132
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Date	10/16/2015
Attachments	VP_Final_Motion.pdf(234118 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial No. 85/924,667

Filed May 6, 2013

For the Trademark VOICE PROCTOR

Published in the Official Gazette on January 7, 2014

FINANCIAL INDUSTRY REGULATORY)	
AUTHORITY, INC.)	
)	
Opposer,)	Opposition No. 91217235
)	
v.)	MOTION FOR DISMISSAL
)	37 C.F.R. §2.132(a)
VOICE PROCTOR, INC.,)	
)	
Applicant.)	
_____)	

**APPLICANT'S MOTION FOR DISMISSAL
BASED UPON OPPOSER'S FAILURE TO PROVE CASE**

Pursuant to 37 C.F.R. 2.132(a), Applicant again moves for judgement based upon Opposer's failure to prove case. TBMP 535.02.

I. Opposer Failed to Prove Case

Applicant filed an application to register its mark on May 6, 2013. Apart from statements made in its Notice of Opposition filed July 7, 2014, Opposer has set forth no reason, arguments, or evidence as to why Applicant's mark should not be registered on the Principal Register.

Opposer made no Initial Disclosures.

Opposer conducted no discovery.

Opposer made no Pre-Trial Disclosures.

Opposer provided no testimony.

The time for taking testimony by Opposer has expired. Opposer has not taken testimony or offered any other evidence. 37 C.F.R. 2.132(a). Applicant has been harmed by the delay in registration of its mark, and wishes to save this Board and both parties

further time and effort associated with continuing this trial. Applicant respectfully requests the Board to promptly consider this dispositive motion pursuant to 37 C.F.R. 2.117(b).

II. Opposer Continues to Delay Proceedings Without Taking Steps Toward Resolution

This application published for opposition on January 7, 2014, and parties commenced negotiations soon thereafter. Opposer filed three motions for extensions of time to Oppose,¹ and finally filed its Notice of Opposition on July 7, 2014. Both parties continued working toward resolution and settlement until August 21, 2014, when Applicant proposed its final offer for settlement.

Applicant respectfully objects to any further delay, expense, suspension, or extension of time. Discovery closed March 14, 2015. Opposer's deadline for completing testimony was June 12, 2015. Opposer filed another motion to delay proceedings in its motion to suspend filed on October 15, 2015, the extended date for the end of Opposer's testimony period.²

Opposer seeks to further extend the testimony period by claiming extraordinary circumstances. Opposer supports this with an unsworn statement and no evidence. Regarding Opposer's statements, when stating that "Opposer did not receive the final-offer draft until six days ago," Opposer refers to Applicant's final offer for settlement document entitled 'voice proctor coexistence 08 21 14.docx.' which was originally forwarded to Opposer's counsel by email on August 21, 2014, resent February 20, 2015, and again at Opposer's request on October 9, 2015.

Opposer's unsworn statement that it "is actively considering settlement, but is a large organization and simply has not had enough time," even if true, fails to rise to the level of evidence required for a showing of good cause, let alone extraordinary circumstances. *See e.g. Luemme Inc. v. D.B. Plus Inc.*, 53 USPQ2d 1758, 1760 (TTAB 1999) ("sparse motion contains very little information upon which the Board could find good cause."); *see also* 37 C.F.R. 207.03 ("Extraordinary circumstances are those which are beyond what is usual or ordinary, for example fire, extreme weather, or death."); *In re Societe Des Produits Nestle S.A.*, 17 USPQ2d 1093, 1094 (Comm'r 1990) (mere existence of settlement discussions does not constitute extraordinary circumstances).

¹ Extensions of Time 85924667, dated 02/06/14, 03/06/14, and 05/06/14.

² Once again Opposer filed for an extension of time at the last moment of the last day of the testimony period. Opponent only provided Applicant with notice of service after the filing deadline, at 12:01am EDT October 16, 2015.

Applicant hereby files its Motion to Dismiss the Opposition for Failure to Prosecute pursuant to 37 C.F.R. 2.132(a) and 2.117(b).

Respectfully Submitted,

/Jeremy A. Rovinsky/_____

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CERTIFICATE OF SERVICE

I hereby certify that pursuant to 28 U.S.C. § 1746, that on this 16th day of October, 2015, I cause a true copy of the attached APPLICANT'S MOTION FOR DISMISSAL BASED UPON OPPOSER'S FAILURE TO PROVE CASE to be served by Electronic Mail upon:

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/Matthew L. Bycer/
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CERTIFICATE OF ELECTRONIC MAILING

I hereby certify that the foregoing APPLICANT'S MOTION FOR DISMISSAL BASED UPON OPPOSER'S FAILURE TO PROVE CASE is being submitted electronically through the Trademark Trial and Appeal Board's ESTTA System on this October 16, 2015.

/Matthew L. Bycer/

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